

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

CHRISTY CARTY, INDIVIDUALLY AND	§	
AS NEXT FRIEND FOR BRYCE CARTY,	§	
JUSTICE CARTY AND MADDY CARTY,	§	
MINORS AND AS REPRESENTATIVE OF	§	
THE ESTATE OF JIMMY CARTY, JR.,	§	
DECEASED,	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 2-06-CV-138 (TJW)
	§	
TEXAS DEPARTMENT OF PUBLIC	§	
SAFETY, COMMANDER ALBERT	§	
RODRIGUEZ, LIEUTENANT ERWIN	§	
BALLARTA, KIM PACIFIC MARTIAL	§	
ARTS AND RINGSIDE, INC.,	§	
Defendants.	§	

**MEMORANDUM ORDER**

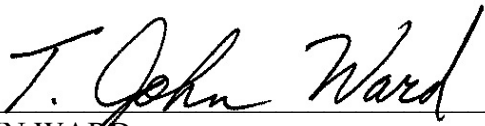
Before the Court is Defendants Albert Rodriguez's and Erwin Ballarta's Motion to Reconsider Denial of Discovery Stay and to Quash Deposition Notices (#75). The motion is DENIED.

The Court previously denied, without prejudice, Defendants' qualified immunity defense. *See* Dckt. #36. This was not a denial on the merits and Defendants may reassert their qualified immunity defense once the factual record relating to qualified immunity has been more fully developed. The Court has permitted only limited discovery, as to Rodriguez and Ballarta, on the issue of qualified immunity. *Id.* Such discovery orders are not immediately appealable. *Lion Boulos v. Wilson*, 834 F.2d 504, 507-08 (5th Cir. 1987).

Defendants argue that, once a notice of appeal has been filed, a district court may not proceed with pre-trial matters against them as held in *Williams v. Brooks*, 996 F.2d 728, 729-30 (5th Cir.

1993). However, *Williams* involved a denial of immunity on the merits. *See id.* at 729. *Williams*, therefore, is distinguishable. *See Hegarty v. Somerset County*, 25 F.3d 17, 18 (1st Cir. 1994) (“[T]he district court, prior to its ruling on the issue of qualified immunity, properly ordered some discovery *limited to that issue*. . . . What the district court *thereafter* authorized, and what we have stayed pending these appeals, is more extensive discovery directed at the merits of the case.”) (citation omitted). Accordingly, Defendants’ motion to reconsider this Court’s previous denial of their motion to stay discovery is DENIED. Defendants’ motion to quash deposition notices is also DENIED.

SIGNED this 14th day of December, 2006.

  
\_\_\_\_\_  
T. JOHN WARD  
UNITED STATES DISTRICT JUDGE